IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17532 of 2006
Date of decision 7 .11.2006

Mehtab Singh .. petitioner

Versus
State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR
HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. RK Malik, Advocate for the petitioner

M.M.Kumar, J.

The petitioner has been working on the post of Exemptee Head Constable and has challenged order dated 21.10.2006 (Annexure P.12) passed by the Director General of Police, Haryana, respondent no.2. He has reviewed the earlier order passed by his predecessor dated 4.1.2002 (Annexure P.7) vide which the Director General of Police had reduced the punishment of stoppage of 5 increments with permanent effect imposed on 12.12.1989 (Annexure P.2) to one increment with temporary effect vide order dated 4.1.2002 (Annexure P.7).

Brief facts of the case are that the petitioner was enrolled as a Constable in the Haryana Police force on 5.8.1980. He was charge sheeted to which he submitted his reply. The Enquiry Officer was appointed to enquire into the allegations that on 13.3.1980 he under the influence of liquor entered the office of Moharrir Head Constable of Police Station, Thaska. At that time Constable Raj Kumar (Constable No.1092) was making report in the daily diary in respect of his travelling allowance. He abused Constable Raj Kumar and inflicted brick blow on his head by alleging that the latter was in the habit of back biting against him. The S.I. Deep Ram who was the then SHO of Police Station, Thaksa got the petitioner medically examined. Thereafter he was placed under suspension and a report to that effect was sent to D.S.P. HQ Kurukshetra who was the supervisory officer of the police station which was

forwarded by him to the Superintendent of Police, Kurukshetra. The Superintendent of Police approved the suspension of the petitioner and ordered the initiation of departmental enquiry against him by appointing the then A.S.P. Kurukshetra Shri Prabhat Rajan Deo IPS as the Enquiry officer. The Enquiry Officer came to the conclusion that the allegations against the petitioner stood proved and accordingly he submitted his report on 22.9.1989. In pursuance to the findings recorded by the Enquiry officer, the Superintendent of Police issued a notice to the petitioner on 6.10.1989 (Annexure P.1) calling upon him to show cause as to why the punishment of dismissal from service should not be inflicted upon him. He submitted his reply on 20.10.1989. After hearing the petitioner, the Superintendent of Police recorded the following order:

> **" I have given my considered thought to the entire evidence on record and plea of the defaulter. The contention of the defaulter is baseless, unfounded and unsubstantiated on record. The version of Const. Raj Kumar is supported by an independent and natural witness MHC Sat Narain who was present in the office at that time. No ill will has been alleged much less proved against MHC Sat Narain. He was cross-examined by the defaulter, but nothing could come out of it. As regards, the plea that he was smelling of alcohol because of his having taken a dose of some tonic that too falls to the ground after going through the statements of PW 2 Dr.Sushil Singal. This witness has clearly stated that he found the gait and voice of the defaulter staggering. This witness further stated that the samples of blood and urine of the defaulter could not be obtained as he refused to give the same. This refusal on the part of the defaulter raises a presumption against him., Had he infact taken the alleged tonic he would not have so refused. I, thus, agree with the finding of**

the Enquiry Officer and hold that the charge against the defaulter has been fully proved on record. However, keeping in view the past service record of the defaulter and taking a lenient view in the matter I award a punishment of stoppage of five future annual increments with permanent effect to the defaulter instead of the proposed penalty."

Against the afore-mentioned order of inflicting punishment of stoppage of five future annual grade increments with cumulative effect, the petitioner preferred an appeal to the Deputy Inspector General of Police, Ambala Range, Ambala who rejected the appeal on 21.5.1990 (Annexure P.3) upholding the order of Superintendent of Police and even the revision petition filed against the afore-mentioned order dated 21.5.1990 (Annexure P.3) has been dismissed by the Director General of Police on 6.9.1991 (Annexure P.4).

On 9.10.2001, the Financial Commissioner and Secretary, Department of Home, Government of Haryana forwarded the mercy appeal of the petitioner (Annexure P.6). A copy of the undated appeal allegedly filed by the petitioner is Annexure P.5. The Director General of Police converted the punishment of the petitioner from stoppage of five increments with cumulative effect to that of one increment with temporary effect on 4.1.2002 (Annexure P.7) by observing as under:

" I have carefully gone through the mercy petition, departmental enquiry file and all relevant records. Departmental enquiry has been conducted as per prescribed rules and procedure and does not suffer from any legal infirmity. Misconduct of the petitioner was fully proved during the course of departmental proceedings.Various pleas taken by the petitioner have been examined and found to be devoid of any merit. However, keeping in view the misconduct of the petitioner, the punishment of stoppage of five increments with permanent effect seems to be

excessive and too harsh.

Now, therefore, keeping in view the above facts and after taking lenient view, the punishment of stoppage of five increments with permanent effect is hereby reduced to that of stoppage of one increment with temporary effect in the principles of natural justice. A copy of this order be supplied to the petitioner, free of cost."

A perusal of the afore-mentioned opinion expressed by the Director General of Police shows that major penalty of stoppage of five annual grade increments with permanent effect was found to be excessive and harsh. A minor penalty of stoppage of one increment has been imposed despite the fact that the Director General of Police has found in his earlier order that there was no defect in the imposition of stoppage of five increments with cumulative effect while dismissing his revision petition on 6.9.1991. After a period of over one decade the receipt of mercy petition and disposal of the same by the Director General of Police resulted into issuance of show cause notice by the Director General of Police, Haryana on 17.8.2006 to which the petitioner filed his reply (annexure P.9) and eventually the Director General of Police ordered the withdrawal of the order dated 4.1.2002 (annexure P.7) passed by his predecessor. The order dated 12.12.1989 (annexure P.2) has been upheld and restored. As a consequence thereof the order dated 21.5.1990 (Annexure P.3) passed by the Deputy Inspector General of Police on 21.5.1990 (Annexure P.3) in appeal and the order dated 6.9.1991 (Annexure P.4) passed by the Director General of Police in revision has also been restored.

After hearing the learned counsel for the petitioner, we are of the considered view that this petition lacks merit and is liable to be dismissed. It is well settled that the quasi judicial authorities like the Director General of Police are the creatures of the statute and they can exercise power only in

accordance with such a statute. In the present case, the Punjab Police Rules, 1934 are applicable. Rule 16.28 of the Rules clothe the Director General of Police with power of overall supervision which seemingly appears to be power of review and the same reads as under:

> **" 16.28. Powers to review proceedings.- (1) The Inspector General, a Deputy Inspector General, and a Superintendent of Police may call for the records of awards made by their subordinates and confirm, enhance, modify or annul the same or make further investigation or direct such to be made before passing orders. (The State Government may also call for the records and review the awards made by the Inspector General of Police Punjab or by any other authority subordinate to him.)**
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> **(2)If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement, or not. The order should also state whether service previous to dismissal should count for pension or not.**
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> **(3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why his punishment should not be enhanced."**

A perusal of the afore-mentioned rules makes it clear that the Director General of Police and other officers have been clothed with the power to call for the records of any case for going through the orders passed by their subordinates. They have also been empowered to confirm, enhance, modify or annul any such order or issue directions for further investigation. Similar power has been given to the State Government. In the present case, the State Government had sent a copy of the 'mercy appeal' filed by the petitioner to the Director General of Police. On the receipt of the afore-mentioned 'mercy appeal' the Director General of

Police has passed the impugned order dated 4.1.2002 (Annexure P.7) by setting aside the order dated 6.9.1991 (Annexure P.4). The afore-mentioned provision could not be construed to mean that the Director General of Police is entitled to review its own order. The expression 'review' used in rule 16.28 only connotes the supervisory power of the superior officers over inferior and subordinate officers. In any case the principle of reasonableness would require that an order passed as far as back as 10 years is not re-opened because it would violate all limits of reasonableness.

Even otherwise it is patent from the record that the Superintendent of Police after holding enquiry into the charges had inflicted on the petitioner the punishment of stoppage of 5 increments with cumulative effect vide order dated 12.12.1989 (Annexure P.2) and the afore-mentioned order was upheld in appeal on 21.5.1990 (Annexure P.3). Even the revision petition filed by the petitioner was dismissed by the Director General of Police. It was almost after a decade that the Director General of Police entertained the 'mercy appeal' and set aside the order passed by 6.9.1991 (Annexure P.4) by assuming the jurisdiction of ' review' which does not flow from Rule 16.28 of the rules.

The argument raised by Mr. R.K.Malik, learned counsel for the petitioner is that the impugned order dated 21.10.2006 (Annexure P.12) has been passed without furnishing the petitioner various copies of documents as demanded by the petitioner vide application dated nil (Annexure P.9) and letter dated 28.9.2006 (Annexure P.10). He has also drawn our attention to the reminder sent on 5.10.2006 (annexure P.11) . We are not impressed with the argument raised because if such an argument is accepted then the resultant effect would be that the order dated 4.1.2002 (annexure P.7) which is sought to be annulled by the impugned order dated 21.10.2006 (Annexure P.12) would stand revived. It is well settled that if by exercise of jurisdiction

under Article 226 of the Constitution an order is quashed on the ground of breach of natural justice then the Court is not bound to exercise such jurisdiction if it would result into restoration of an earlier order of the Government which had also been passed in breach of the principles of natural justice or which was otherwise illegal. The afore-mentioned proposition has came up for consideration before Hon'ble the Supreme Court in the case of Gadde Venkateswara Rao v. Government of Andhra Pradesh AIR 1966 SC 828 which is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because it has been passed against the petitioner in breach of natural justice. A pointed question was framed and considered by Hon'ble the Supreme Court in the case of M.C. Mehta v. UOI (1999) 6 SCC 237 which is as under:

> **" (2) Whether this Court is not bound under Article 32 (or the High Courts under Article 226) to quash an order of the Government on the ground of breach of natural justice if such an action will result in the restoration of an earlier order of the Government which was also passed in breach of natural justice or which was otherwise illegal ?"**

After referring to its earlier judgement in the case of Gadde Venkateswara Rao (supra), their Lordships observed as under:

> **" The above case is a clear authority for the proposition that it is not always necessary for the Court to strike down an order merely because the order has been passed against the petitioner in breach of natural justice. The Court can under Article 32 or Article 226 refuse to exercise its discretion of striking down the order if such striking down will result in restoration of another order passed earlier in favour of the petitioner and against the opposite party, in violation of the principles of natural justice or is otherwise not in accordance with law.**

Apart from dealing with the breach of principles of natural justice, their Lordships also considered the question whether the interference of the Court under Article 226 of the Constitution would result into restoration of another order which was not legal. In that regard, reference has been made to the case of Mohd. Swalpleh v. IIIrd ADJ (1998)1 SCC 40. The views of their Lordship is discernible from para 18 of the judgement and the same reads as under:

> **" We would next refer to another case, where though there was no breach of the principles of natural justice, this Court held that interference was not necessary, if the result of interference would be the restoration of another order which was not legal. In Mohd. Swalleh v. IIIrd ADJ (1988) 1 SCC 40 which arose under the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction)Act,1972, the prescribed authority dismissed an application filed by the landlord and this was held clearly to be contrary to the very purpose of Section 43(2)(rr) of the Act. The District Court entertained an appeal by the landlord and allowed the landlord's appeal without noticing that such an appeal was not maintainable. The tenant filed a writ petition in the High Court contending that the appeal of the landlord before the District Court was not maintainable. This was a correct plea. But the High Court refused to interfere. On further appeal by the tenant, this Court accepted that though no appeal lay to the District Court, the refusal of the High Court to set aside the order of the district Judge was correct as that would have restored the order of the prescribed authority, which was illegal."**

When the principles enunciated in the afore-mentioned judgements of Hon'ble the Supreme Court are applied to the facts of the

present case then it becomes evident that if this Court exercise jurisdiction under Article 226 of the Constitution quash the order dated 21.10.2006 (Annexure P.12) it would lead to unnecessary consequence of restoration of the order dated 4.1.2002 (Annexure P.7). The afore-mentioned order could not be sustained in the eyes of law as it is wholly unreasonable because the same is without jurisdiction and it has been passed after the expiry of more than one decade. Therefore, we are not impressed with the argument raised by Mr. R.K.Malik, learned counsel for the petitioner.

For the reasons mentioned above, this petition fails and the same is dismissed.

(M.M.Kumar)
Judge

(M.M.S.Bedi)
Judge

7.11.2006
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